



Commonwealth of Virginia  
Virginia Information Technologies Agency

**INFORMATION TECHNOLOGY MANAGEMENT SERVICES**

**OPTIONAL USE CONTRACT**

Date: April 14, 2004

Contract #: VA-040115-INTL

Authorized User: Center for Innovative Technology (CIT)

Contractor: Intelligix, Inc.  
2214 Rock Hill Road  
Suite 503  
Herndon, VA 20170

FIN: 54-1973998

Contact Person: Daniel D. Blake  
703-787-8060 ext. 202  
703-598-1348 (mobile)  
[dblake@intelligix.com](mailto:dblake@intelligix.com)

Term: March 1, 2004 – February 28, 2005

Payment Terms: Net 30 days

For Additional Information, Please Contact:

Contract Information:  
Joe Parr  
Contracts Engineer  
Phone: 804-371-5991  
Fax: 804-371-5969  
E-Mail: [joe.parr@vita.virginia.gov](mailto:joe.parr@vita.virginia.gov)

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.asd.virginia.gov>

**VA-040115-NTEL**  
**CONTRACT CHANGE LOG**

[illegible]

## VA-040115-NTEL

### BILL TO ADDRESS

Center for Innovative Technology  
CIT Tower, Suite 600  
Attention: Accounts Payable  
2214 Rock Hill Road  
Herndon, VA 20170

Once CIT has approved payment of the Contractor's invoice, it shall be forwarded by CIT to:

Virginia Information Technologies Agency  
Attention: Accounts Payable  
110 South 7<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Richmond, VA 23219

### AGENCY POINTS OF CONTACT

#### CIT

Donna DePeri  
703-689-3005 (Phone)  
703-464-1704 (Fax)  
[ddeperi@cit.org](mailto:ddeperi@cit.org)

#### VITA

##### Accounts Payable

Genevieve Nelson  
804-371-5666  
804-371-5505 (Fax)  
[gen.nelson@vita.virginia.gov](mailto:gen.nelson@vita.virginia.gov)

##### Contract Management

Joe Parr  
804-371-5991  
804-371-5969 (Fax)  
[joe.parr@vita.virginia.gov](mailto:joe.parr@vita.virginia.gov)

### CONTRACTOR POINTS OF CONTACT

##### Relationship Officer, Contracts

Mr. Daniel D. Blake  
President  
703-787-8060 ext. 202  
703-598-1348 (mobile)  
[dblake@intelligix.com](mailto:dblake@intelligix.com)

##### Project Manager

Mr. Daniel Stephens  
Practice Manager, Systems Group  
703-787-8060 ext. 203  
703-655-7027 (mobile)  
[dstephens@intelligix.com](mailto:dstephens@intelligix.com)

##### Primary Support Contact

To be determined  
Network Engineer  
703-787-8060

##### Accounting Contact

Ms. Kristin Wahlne  
Accountant  
703-787-8060 ext. 201  
[kwahlne@intelligix.com](mailto:kwahlne@intelligix.com)

**MODIFICATION #1  
TO  
CONTRACT NUMBER VA-040115-INTL  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
INTELLIGIX, INC.**

This MODIFICATION #1 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and Intelligix, Inc., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #1 is hereby incorporated into and made an integral part of Contract VA-040115-INTL, as modified.

Both of the above referenced parties agree to the following:

**Reference: Page 9, Paragraph 24 entitled "Term":**

Delete the first sentence of the above referenced paragraph and replace with the following sentence:

"The initial Term of this Contract shall be for a one year period beginning on March 1, 2004 and ending on February 28, 2005."

**Reference: Page 4, Paragraph 10 entitled "Modifications":**

Both of the above referenced parties further agree delete the following two paragraphs contained in the section entitled "Pricing" in Attachment "A" to the Agreement,

"The Contractor shall maintain time records for employees and / or independent contractors providing services under this contract and will provide a report of cumulative time spent vs. budgeted time upon request. The Contractor may provide more or less than 122 hours of services in any given month with the advance written approval from the CIT authorized representative. At VITA's request, the Contractor shall substitute the network engineer's services for senior personnel's services at a two to one ratio. For example, in a given month, the Contractor may provide 122 hours of network engineer's services and 10 hours of senior personnel's services.

Under no circumstances shall the CIT authorized representative have the authority to modify this Agreement. Compensation for work performed in excess of the Time Requirement will be at a rate one and one-half times the appropriate hourly rate. Time spent by Contractor's employees and independent contractors at Regional offices of CIT will be included in the calculation of the Time Requirement. Time spent traveling between the Herndon office location and regional offices and / or between regional offices will be included in the calculation of the Time Requirement as requested and authorized by CIT."

And replace these two paragraphs with the following two paragraphs:

"Contractor's compensation for work performed by its employees and independent contractors shall be up to \$127,800 in the base year on a time and materials hourly rate as delineated in the Pricing Schedule contained in this Attachment "A" to the Agreement, paid monthly in arrears. CIT shall designate, in writing, the CIT authorized representative. Contractor must obtain written authorization from the CIT authorized representative prior to its employees or independent contractor exceeding \$10,650 in services, at the hourly rates listed above, in any month.

The Contractor shall maintain time records for employees and/or independent contractors providing services under this contract and will provide a report of cumulative time spent vs. budgeted time upon request. The Contractor may provide more or less than 122 hours of services in any given month. For example, in a given month, the Contractor may provide 122 hours of network engineer's services and 10 hours of senior personnel's services. "

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-040115-INTL and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED  
REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND  
ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE  
TERMS AND CONDITIONS OF THE CONTRACT.**

INTELLIGIX, INC.

BY: Daniel D. Blake

NAME: DANIEL D. BLAKE

TITLE: PRESIDENT

DATE: 4/12/2004

COMMONWEALTH OF VIRGINIA

BY: Joe A. Parr

NAME: Joe A. Parr

TITLE: Tech Contracts Manager

DATE: 4/14/04

**CONTRACT VA-040115-INTL  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
INTELLIGIX, INC.**

**1. SCOPE OF CONTRACT**

The following paragraphs contain the Contractual terms and conditions by which the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State", or "VITA" (Virginia Information Technologies Agency) will acquire Information Technology Management Services ("Services"), as delineated in Attachment "A" to this Agreement, from Intelligix, Inc., hereinafter referred to as "the Contractor." These Services are to be performed at the Center for Innovative Technology ("CIT"), CIT Tower, Suite 600, 2214 Rock Hill Road, Herndon, VA 21070 or at CIT's discretion, other locations.

**2. APPLICABLE LAWS AND COURTS**

This Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

**3. ANTI-DISCRIMINATION**

The Contractor certifies to the Commonwealth that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, Services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every Contract over \$10,000 the provisions in a. and b. below apply:

a. During the performance of this Contract, the Contractor agrees as follows:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to

employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting these requirements.

b. The Contractor will include the provisions of 1) above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

#### **4. ETHICS IN PUBLIC CONTRACTING**

The Contractor certifies that this Contract is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other supplier, manufacturer or subcontractor in connection with this Contract, and that it has not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, Services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

#### **5. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

The Contractor certifies that it does not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

#### **6. DEBARMENT STATUS**

The Contractor certifies that it is not currently debarred by the Commonwealth of Virginia from entering into Contracts for the type of goods Services covered by this Contract, nor are they an agent of any person or entity that is currently so debarred.

#### **7. ANTITRUST**

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or Services purchased or acquired by the Commonwealth of Virginia under said Contract.

## 8. PAYMENT

### a. To Prime Contractor:

- 1) Invoices for Services ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the Contract. All invoices shall show the state Contract number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- 2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- 3) All Services provided under this Contract, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed. All Payment for Services under this Contract will be monthly in arrears.
- 4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- 5) **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (Code of Virginia, § 2.2-4363).

### b. To Subcontractors:

- 1) A Contractor awarded a Contract under this solicitation is hereby obligated:
  - (a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or



(b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

2) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

## **9. ASSIGNMENT OF CONTRACT**

A Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

## **10. MODIFICATIONS**

This Contract maybe modified in accordance with §2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives or designees noted below. No modifications to this contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

Commonwealth of Virginia:  
Contracts Manager, VITA  
or designee

Contractor:  
Mr. Daniel D. Blake  
Intelligix, Inc.

Any contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

## **11. DEFAULT**

In case of failure to deliver Services in accordance with the Contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Commonwealth may have.

## **12. TAXES**

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at

<http://www.tax.state.va.us/>. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

### **13. INSURANCE**

By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The bidder or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

#### **INSURANCE COVERAGES AND LIMITS REQUIRED:**

- a. Worker's Compensation - Statutory requirements and benefits.
- b. Employers Liability - \$100,000.
- c. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.
- d. Automobile Liability - \$500,000 - Combined single limit.

### **14. DRUG-FREE WORKPLACE**

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

## **15. NONDISCRIMINATION OF CONTRACTORS**

A Contractor shall not be discriminated against in the award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives Services provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the Services, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent Services from an alternative provider.

## **16. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION**

The eVA Internet electronic procurement solution, web site portal [www.eva.state.va.us](http://www.eva.state.va.us), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

Vendors are strongly encouraged to register prior to submitting a bid or offer. Failure to register will result in the bid being found non-responsive and rejected. All vendors must register in both the eVA and the Ariba Commerce Services Network Vendor Registration Systems.

a. eVA Basic Vendor Registration Service: \$25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding, as they become available.

b. eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.

c. Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit information electronically between state agencies and vendors. There is no additional fee for this service.

## **17. BREACH**

The Contractor shall be deemed in breach of this Agreement if the Contractor (a) fails to make any Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to

requests for maintenance or other required service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the Commonwealth's Show Cause Notice within ten days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Services. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

## **18. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS**

Any commitment made by the Contractor within the scope of this Contract shall be binding upon Contractor. For the purposes of this Contract, a commitment by the Contractor includes:

- a. Prices and options committed to remain in force over a specified period(s) of time;
- b. Any written warranty or representation made by the Contractor in this solicitation as to hardware or software performance, or other physical design or functional characteristics of that which is offered.

## **19. PATENT/COPYRIGHT PROTECTION**

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.2-510 and Section 2.2-514 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of equipment or software furnished hereunder with any equipment or software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Service.

If the use of such equipment or software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the software, the Contractor agrees to take back the infringing equipment, software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs above.

## **20. NON-APPROPRIATION**

All funds for payment of Services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those Services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for Services dependent on such federal funds without further obligation.

## **21. HEADINGS NOT CONTROLLING**

Headings used in this Contract are for reference purposes only and shall not be considered to be a substantive part of this Contract.

## **22. ENTIRE AGREEMENT**

This Contract, all Services specifically listed in Attachment "A", and the notes in Attachment "A" constitute the entire agreement between the parties with respect to the subject matter of this Contract. All prior agreements, representations, statements, negotiations and undertakings are hereby superseded with respect to Services acquired by the State under the terms and conditions of this Contract.

No other written documents regardless of form or content shall be executed by any agency or institution for Services acquired under this Contract unless signed by the Contracts Manager, VITA, or his authorized representative.

## **23. PRICE PROTECTION/ADJUSTMENTS**

The State will not pay any additional costs above those costs identified herein. In no event may the amount of any Contract, without adequate consideration, be increased for any purpose.

Any price decrease effectuated during the Contract period by reason of market change shall be passed on to the Commonwealth of Virginia. This decrease will be effective on the date the price decrease is announced to the general public.

#### **24. TERM**

The initial Term of this Contract shall be from one year from the date of execution by both parties. The Commonwealth reserves the right to extend this Contract for up to three (3) additional one (1) year periods after the initial Term. The Commonwealth will issue a writing, 30 days prior to any expiration, indicating any extension.

Maintenance increases for additional periods shall be effective on the anniversary date for each succeeding year. All increases will be governed by the CPI-W index entitled "Other Services". The percentage increase shall not exceed the above index's most recent percentage available to the Commonwealth as published by the Bureau of Labor Statistic's, Philadelphia Office.

#### **25. INVENTIONS AND COPYRIGHTS**

The Contractor is prohibited from copyrighting any papers, reports, forms or other materials, and from obtaining any patent on any invention or other discovery resulting solely from its performance under the terms and conditions of this Contract.

#### **26. CONTRACTUAL RECORDS**

All Contractual books, records and other documents related to matters under this Contract shall be made available by Contractor to the State and its designated agents for a period of five (5) years after final payment for purposes of audit and examination.

Contractual records are hereby further defined as this Contract and all delivery/purchase orders, invoices or correspondence directly relating to this agreement.

#### **27. LIMITATION OF LIABILITY**

To the maximum extent permitted by applicable law, the Contractor will not be liable under this Contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this Contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the Contract expressly provides a right to damages, indemnification or reimbursement.

## **28. ORDERING**

VITA is the only authorized Ordering authority under this Contract. The Commonwealth shall not be required to pay for any Services ordered, other than for Services ordered by the Commonwealth.

## **29. ACCEPTANCE, TESTING AND COMPLIANCE WITH SPECIFICATIONS**

All Services are subject to inspection and testing by the State, as delineated herein under TESTING AND INSPECTION, and any that does not meet or exceed the specifications or other requirements of the Contract may be rejected. The State shall be given thirty (30) days from the completion of installation by the Contractor (or thirty (30) days after delivery if customer installed) to test, evaluate and accept the Services delivered or furnished under this Contract (provided that the using agency, in its sole discretion, may accept the same prior to expiration to the thirty (30) day period). If the Contractors Services fail to meet the Contract specifications, including the specifications of the brand name, or those required by the Contractor's own technical documentation, then the same may be rejected and returned to the vendor. Such rejection will terminate this Contract and exempt the State from all costs incurred by the Contractor.

Acceptance shall be effective for the purpose of determining title to that which is delivered and for making payment, however, acceptance by the State following testing and evaluation during the thirty (30) day period shall not be conclusive that the Services conform in all respects to the Contract specifications and other requirements. In the event that nonconformance therewith is discovered by the State after acceptance, whether due to a latent defect or otherwise, the Contractor shall take whatever action is necessary to conform the Services to the Contract specifications and other requirements, including but not limited to modification or replacement of the same. The Contractor's failure to do so shall constitute breach of Contract for which the State may exercise the remedies provided in the section herein entitled "Termination and Cancellation," in addition to and not in lieu of any other remedies available under Virginia law.

## **30. INVOICES**

All invoices shall be rendered monthly, to VITA after obtaining written acceptance of the Services from the CIT approval authority for payment after all Services covered by the invoice have been performed. After the invoice has been approved for payment by CIT, the Contractor shall promptly forward it to VITA, Attn: Accounts Payable, 110 South 7<sup>th</sup> Street, 3<sup>rd</sup> Floor, Richmond, VA 23219. The date the invoice is received by Accounts Payable, VITA will be considered the beginning of the thirty (30) day period allowed for payment by the Virginia Prompt Payment Act as delineated in numbered paragraph 8, entitled "Payment" herein. No invoice may include any costs other than those identified herein. Invoices shall provide at a minimum:

1. Type and description of the Service;
2. Charge for each item (Service);

3. This Contract Number, and;

4. Contractor's Federal Identification Number (FIN).

### **31. SERVICES WARRANTY**

All Services purchased under this Agreement remain under warranty for the time period commencing after acceptance by the Commonwealth and continuing to expiration of the Agreement, or discontinuance of the Services at the discretion of the Commonwealth.

Contractor shall deliver and maintain the Services as described herein. In addition, the Contractor shall provide a single point of contact for the reporting of Service problems encountered by the Commonwealth.

### **32. TERMINATION AND CANCELLATION**

The Commonwealth shall have the unilateral right to terminate this Contract for Default, in the event that any one or more of the following events of default occur or continue during the term of this agreement, (a) the vendor shall fail to deliver the Services required by this Contract or (b) the vendor shall repeatedly fail to respond to requests for Services within the time limits set forth in the Contract or (c) the vendor shall breach any of the other terms set forth within this agreement or (d) the vendor shall fail to cure any breach after receiving a "Show Cause Notice" identifying the failure, and providing the vendor ten (10) days to cure the failure/nonperformance. If the vendor fails to answer the cure notice, or does not correct the deficiencies noted, the State may immediately terminate the agreement for Default.

In such event, the Commonwealth will only be liable for cost incurred to the date of termination. All costs of de-installation and return of the equipment will be the vendor's expense.

The Commonwealth's failure to exercise its right to terminate for default under this provision shall not be construed as a waiver of its right to terminate, rescind or revoke this Contract in the event of any subsequent breach of any provisions of this agreement.

### **33. TERMINATION FOR CONVENIENCE**

This Contract may be terminated, in whole or in part, upon sixty (60) days advance written notice by the Commonwealth of Virginia. There are no additional costs or financial obligations to the Commonwealth upon termination for convenience.

### **34. FAILURE TO DELIVER**

In the event the Contractor fails for any reason to deliver in a timely manner or according to Contract terms the Services set forth herein, the Commonwealth, at its own discretion, may give Contractor oral or written notice of such breach. Once notice by State is sent or given, State may immediately procure the items from another source. Once State has effected a purchase from an alternate source (in accordance with the Virginia Public Procurement Act) the parties agree that the State may charge-back



Contractor, in which case Contractor agrees to reimburse State for any difference in cost between the original Contract price and the State's cost to cover from the alternate source. In no event shall State be held to pay Contractor any costs incurred by Contractor, including but not limited to ordering, marketing, manufacturing, or delivering the item(s) which are subject of the State's notice of breach. This remedy is in addition to and not in lieu of any other remedy the Commonwealth may have under this agreement and the laws of the Commonwealth of Virginia.

### **35. CONTRACTUAL DISPUTES**

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support services hereunder.

### **36. CONTRACTOR ACCESS TO COMMONWEALTH LOCATION/S**

Commonwealth shall grant to Contractor personnel such access to the Commonwealth location as may be necessary or appropriate for Contractor to perform its obligations under this Agreement, subject to all security issues. For any individual Commonwealth location, the Contractor may be required to undergo additional security procedures that may include but not be limited to; records verification, submission of photos and or fingerprints, etc. The Contractor may at any time, for any Commonwealth location, be required to undertake the execution and completion for each individual employee, the requirement of the submission of additional forms that the Commonwealth would consider reasonable for security measures. These forms may include the individual employee's agreement that all Commonwealth information that is garnered while at the Commonwealth site is confidential and proprietary. Any unauthorized release of proprietary information by the Contractor or Contractor's employees shall constitute a breach of this Agreement.

### **37. PROPRIETARY INFORMATION, DUPLICATION AND DISCLOSURE**

The Contractor agrees that all software installed and utilized on Contractor's Assets contains information proprietary to the Commonwealth of Virginia (COV) and other third party software vendors and that disclosure of such information could cause irreparable damage to the Commonwealth of Virginia and its citizens. Therefore, Contractor agrees to hold all information and or software disclosed through operation of this Agreement in strict confidence, as required by this Section and use such information only in performance of this Agreement. No information or software utilized by the Commonwealth while at Contractor's facilities shall be duplicated or furnished to others without the prior written consent of VITA.

Contractor acknowledges that in the course of performing Services hereunder its personnel and subcontractors (if any) will have access to confidential information about COV's business, operations, employees, customers. Contractor agrees that, except as directed by COV, Contractor its employees and its subcontractors shall not at any time during or after the term of this Agreement (a) disclose any Confidential Information to any third party, (b) permit any third party to examine and/or make copies of any reports, documents or electronic data containing Confidential Information (whether they are prepared by Contractor or come into Contractor's possession or under Contractor's control by reason of Contractor's services) or (c) use any Confidential Information for any reason other than in the performance of services hereunder. Upon termination of this Agreement, Contractor shall return to COV or at COV's request destroy, all reports, documents, electronic data and other matter in Contractor's possession or under Contractor's control that contain or relate to Confidential Information. Contractor may disclose Confidential Information to such of its personnel as have a need therefore in the performance of their duties for COV, provided, however, that Contractor shall inform all such personnel of their confidentiality obligations hereunder and shall use its absolute best efforts to ensure their compliance therewith. Contractor shall not be required to treat as confidential any information which:

- (a) contractor can demonstrate was in its possession prior to execution of this Agreement
- (b) has become generally available in the public domain without breach of this Agreement
- (c) becomes lawfully available to Contractor from a source other than the Commonwealth

ANY RELEASE OF PROPRIETARY OR CONFIDENTIAL INFORMATION BY THE CONTRACTOR OR CONTRACTOR'S EMPLOYEES SHALL BE CONSIDERED A BREACH OF THIS AGREEMENT. THE CONTRACTOR SHALL NOT USE THE CONFIDENTIAL INFORMATION OF THE COMMONWEALTH FOR ITS OWN BENEFIT OR FOR THE BENEFIT OF ANY THIRD PARTY. THE PROVISIONS OF THIS SECTION SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT IN PERPETUITY.

### **38. PRIME CONTRACTOR RESPONSIBILITY**

If the Contractor's Services offering include any Services to be supplied by another party, the Contractor agrees as follows:

- a. The Contractor shall act as prime contractor for the procurement and maintenance of the entire proposed configuration and shall be the sole point of contract with regard to all obligations under this Agreement.
- and
- b. The Contractor hereby represents and warrants that the Contractor has made such other party aware of the proposed use and disposition of the other party's Services, and that such other party has agreed in within that it has no objection thereto.

### **39. SEVERABILITY**

Each paragraph and provision of this Agreement is severable from the entire Contract, and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

### **40. CREATION OF INTELLECTUAL PROPERTY**

All copyrightable material created pursuant to this Agreement shall be considered work made for hire and shall belong exclusively to the Commonwealth. If the whole or any part of such copyrightable material cannot be deemed work for hire, the Contractor agrees to assign, and does hereby irrevocably assign, the copyright thereto to the Commonwealth, and shall execute and deliver such further documents as the Commonwealth may reasonably request for the purposes of acknowledging or implementing such assignment.

The Contractor warrants that no individual, other than Contractor's personnel or employees of the Commonwealth working within the scope of their employment, shall participate in the creation of any copyrightable material to be delivered under this Agreement, unless such individual and his or her employer, if any, have signed an intellectual property agreement satisfactory to the Commonwealth.

The Commonwealth shall have all rights, title and interest in or to any invention reduced to practice through the performance of this Agreement.

The Contractor hereby agrees that, notwithstanding anything else in this Agreement, in the event of any breach of this Agreement by the Commonwealth, the Contractor's remedy shall not include any right to rescind or otherwise revoke or invalidate the provisions of this Section. Similarly, no termination of the Agreement by the Commonwealth shall have the effect of rescinding the provisions of this Section.

### **41. EXCUSABLE DELAY**

The Contractor shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms if such failure arises out of causes beyond its reasonable control and without the fault or negligence of the Contractor or its subcontractor(s). Such causes may include, but are not limited to acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the reasonable control and without the fault or negligence of the Contractor or its subcontractors.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

INTELLIGIX, INC.

BY: Daniel D. Blake

NAME: DANIEL D. BLAKE

TITLE: PRESIDENT

DATE: 3 / 1 / 2004

COMMONWEALTH OF VIRGINIA

BY: Joe A. Parr

NAME: Joe A. Parr

TITLE: Tech Contracts Manager

DATE: 3 / 12 / 04

Reviewed:

CIT

Paula G. Ault

Senior Vice President

3/1/2004

**ATTACHMENT "A"**  
**TO**  
**AGREEMENT VA-040115-INTL**  
**FOR THE**  
**VIRGINIA INFORMATION TECHNOLOGIES AGENCY**

Attachment "A" is hereby incorporated into and made an integral part of Agreement Number VA-040115-INTL between Intelligix, Inc. and the Commonwealth of Virginia. In the event of any inconsistency between the provisions of this Attachment "A" and Agreement Number VA-040115-INTL, the provisions of Agreement Number VA-040115-INTL shall control.

**1. SERVICE DESCRIPTION**

The Contractor shall provide IT Management Services for CIT Information Systems, which include, but are not limited to Local and Wide Area Networking Equipment; Server Platforms; Server Operating Systems; Desktop Platforms and Operating Systems; IP Telephony Services, phone systems, voice mail, and Universal Messaging systems; Web servers and applications; Database systems and Client-Server Applications. When authorized by VITA, the Contractor shall assist VITA in the support of hardware and / or software, not specifically listed above, such as firewalls, etc. The Contractor shall provision such services at VITA's discretion and authorization. The Contractor shall adhere to standards, practices, procedures, and configurations prescribed by VITA.

For the purposes of this Agreement, "Normal Working Days" shall mean Monday through Friday, except State holidays. "Normal Business Hours" shall mean 8:30 a.m. EST to 5:00 p.m., EST, Monday through Friday, excluding holidays.

Contractor's employees and / or independent contractors shall be available, either on-site or by phone to respond to problems or issues that require immediate attention during Normal Business Hours with a two (2) hour response time. Contractor may schedule up to fifteen (15) days per year when the Contractor will not be available for a two (2) hour response. Contractor will provide non-emergency Services after Normal Business Hours as required at no extra charge up to a maximum of sixteen (16) hours in any given month. Contractor shall provide emergency services at one and one-half times the regular hourly rate on Monday through Saturday and at two times the regular hourly rate on Sundays. Contractor shall post one week in advance, on the CIT internet, accessible to the CIT staff, the schedule of hours during which Contractor and / or Contractor's employees shall be at the CIT offices to perform Services. Contractor shall be available by pager to CIT IT staff, twenty-four (24) hours per day, seven (7) days per week, including holidays.

## 2. PRICING

	Quantity	Unit Price	Price
Senior Personnel (blended rate) Project Manager, Principal Consultant (Advisor), Senior Technical Personnel	20 hrs/mo.	\$150/hr	\$3,000/mo.
Network Engineer	102 hrs/mo.	\$75/hr	\$7,650
Total	122 hrs/mo.		\$10,650
Contract Total	12 mo.	\$10,650	\$127,800.00

Contractor's compensation for work performed by its employees and independent contractors shall be up to \$10,650.00 per month, paid monthly in arrears. Contractor's employees and independent contractors shall work 122 hours per month (the "Time Requirement"). The Commonwealth, at its sole discretion, has the right to reduce the Time Requirement and associated compensation at the appropriate hourly rate, as delineated in the Pricing Table above for each hour the Time Requirement is reduced. CIT shall designate, in writing, the CIT authorized representative. The CIT authorized representative will provide advance written notification to the Contractor of its intention to reduce the Time Requirement. Contractor must obtain written authorization from the CIT authorized representative prior to its employees or independent contractor exceeding the Time Requirement.

The Contractor shall maintain time records for employees and / or independent contractors providing services under this contract and will provide a report of cumulative time spent vs. budgeted time upon request. The Contractor may provide more or less than 122 hours of services in any given month with the advance written approval from the CIT authorized representative. At VITA's request, the Contractor shall substitute the network engineer's services for senior personnel's services at a two to one ratio. For example, in a given month, the Contractor may provide 122 hours of network engineer's services and 10 hours of senior personnel's services.

Under no circumstances shall the CIT authorized representative have the authority to modify this Agreement. Compensation for work performed in excess of the Time Requirement will be at a rate one and one-half times the appropriate hourly rate. Time spent by Contractor's employees and independent contractors at Regional offices of CIT will be included in the calculation of the Time Requirement. Time spent traveling between the Herndon office location and regional offices and / or between regional offices will be included in the calculation of the Time Requirement as requested and authorized by CIT.

## 3. TRAVEL COSTS

Travel costs incurred by the Contractor for work at the CIT regional offices will be reimbursed in accordance with State Travel Regulations as incorporated herein by reference and available upon request; to include but not be limited to: airfare shall be coach class, hotel stays shall not exceed \$77.00 per night, excluding local taxes and surcharges, meal expenses shall not exceed \$38.00 per day and car rental expenses shall be for midsize cars and priced not to exceed an average for the Regional office location. Travel costs while working at the CIT Herndon office will not be reimbursed. The Contractor

shall submit monthly invoices for travel expenses to the CIT authorized representative for review and approval for payment promptly after the travel expenses have been incurred.

**4. BILL TO ADDRESS**

Center for Innovative Technology  
CIT Tower, Suite 600  
Attn: Accounts Payable  
2214 Rock Hill Road  
Herndon, VA 20170

Once CIT has approved payment of the Contractor's invoice, it shall be forwarded by CIT to:

Virginia Information Technologies Agency  
Attn: Accounts Payable  
110 South 7<sup>th</sup> Street, Third Floor  
Richmond, VA 23219

**5. AGENCY POINTS OF CONTACT**

**CIT**

Donna DePeri  
(703) 689-3005  
(703) 464-1704 (Fax)  
[ddeperi@cit.org](mailto:ddeperi@cit.org)

**VITA**

**Accounts Payable**

Genevieve Nelson  
(804) 371-5666  
(804) 371-5505 (Fax)

**Contract Management**

Supply Chain Management Directorate  
(804) 371-5987  
(804) 371-5969 (Fax)

**6. CONTRACTOR POINTS OF CONTACT**

**Relationship Officer, Contracts**

Mr. Daniel D. Blake  
President  
703-787-8060 x202  
703-598-1348 (mobile)  
[dblake@intelligix.com](mailto:dblake@intelligix.com)

Project Manager

Mr. Daniel Stephens  
Practice Manager, Systems Group  
703-787-8060 x203  
703-655-7027 (mobile)  
[dstephens@intelligix.com](mailto:dstephens@intelligix.com)

Primary Support Contact

To be determined  
Network Engineer  
703-787-8060

Accounting Contact

Ms. Kristin Wahlne  
Accountant  
703-787-8060 x201  
[kwahlne@intelligix.com](mailto:kwahlne@intelligix.com)



**ATTACHMENT "B"**  
**TO**  
**Contract VA-040115-INTL**

***CERTIFICATION REGARDING LOBBYING***

The undersigned certifies, to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature:

Daniel D Blake

Printed Name:

DANIEL D. BLAKE

Organization:

INTELLIGIX, INC.

Date:

3 / 1 / 2004